

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ITT RAYONIER, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-233

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the issuance of regulatory order No. DE 80-641 requiring the installation of an impervious surface, having come on regularly for formal hearing on the 14th day of April, 1981, in Lacey and appellant appearing through its attorney, Linda A. McCorkle; respondent appearing through its assistant attorney general, Charles K. Douthwaite, with David Akana, presiding, and the Board having considered the exhibits, records and files herein, and having mailed its Proposed Order to the parties on the 7th day of May, 1981, and more than twenty days having elapsed from said service; and

1 The Board having received exceptions to said Proposed Order from
2 respondent and replies thereto, and the Board having considered the
3 exceptions and denying same, and being fully advised in the premises,
4 NOW THEREFORE,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
6 Order containing Findings of Fact, Conclusions of Law and Order dated
7 the 7th day of May, 1981, and incorporated by reference herein and
8 attached hereto as Exhibit A, are adopted and hereby entered as the
9 Board's Final Findings of Fact, Conclusions of Law and Order herein.

10 DATED this 16th day of July, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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14 DAVID AKANA, Member

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17 Did not participate
18 GAYLE ROTHROCK, Member

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20 See Concurrence (attached)
21 NAT W. WASHINGTON, Chairman

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 CONCURRENCE OF NAT W. WASHINGTON:

2 I am in agreement with the Final Findings of Fact, Conclusions
3 of Law and Order, including the denial of respondent's exceptions
4 to the Proposed Order. I wish to emphasize, however, that the deci-
5 sion is based on evidence that established only that spills have
6 occurred in the recent past close to the diked area in violation of
7 Chapter 90.48 RCW; and that spills in violation of this chapter may
8 in the future occur inside the diked area. The proof fell short of
9 establishing that a violation of Chapter 90.48 RCW involving a spill
10 inside the diked area was about to occur.

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14 NAT W. WASHINGTON, Chairman
15 POLLUTION CONTROL HEARINGS BOARD
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ITT RAYONIER, INC.,

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STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

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PCHB No. 80-233

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal from the issuance of regulatory order No. DE 80-641 requiring the installation of an impervious surface, came before the Pollution Control Hearings Board, Nat Washington, chairman, and David Akana (presiding), at a formal hearing on April 14, 1981, in Lacey.

Respondent was represented by Charles K. Douthwaite, Assistant Attorney General; appellant was represented by its attorney, Linda A. McCorkle.

Having heard the testimony, having examined the exhibits, and

EXHIBIT A

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant ITT Rayonier, Inc., (hereinafter "ITT") operates a
5 vanillin plant in Hoquiam, Washington adjacent to its pulp mill. The
6 plant has been in operation since April of 1979.

7 II

8 Spent sulfite liquor (SSL) from the pulp mill is used as a raw
9 material to produce vanillin. It is combined with sodium hydroxide to
10 produce raw alkaline liquor (RAL). The RAL is transferred to the
11 vanillin plant where it is processed to form cooked oxidized liquor
12 (COL) and spent oxidized liquor (SOL).¹ The SOL is returned to the
13 pulp mill for processing through chemical recovery. Vanillin is
14 extracted from the COL and is sold commercially. Some chemicals
15 stored are highly caustic or highly acidic.

16 III

17 ITT maintains a series of five tanks to store the chemical used in
18 the vanillin plant. The tanks are enclosed by a 3.5 foot high
19 concrete dike. The dike is 153 feet long and 60 feet wide and
20 includes enough volume to contain the contents of any one tank. The
21 floor of the dike is loose gravel. A concrete collection sump is
22 located within the diked area. Storm water or tank overflow within
23 the dike which reaches the sump will be drained through the sump. The
24 sump is connected to another sump located outside the diked area, near
25

26 1. It is also referred to as vanillin black liquor (VBL).

1 the vanillin plant. Both sumps eventually drain into the pulp mill
2 waste treatment system.

3 The tanks and vanillin plant sump are each provided with high
4 level alarms. However, ITT's spill prevention and control plant at
5 the plant primarily relies on the dike to contain spills from the
6 tanks.

7 IV

8 There is no record of any spill of chemicals from the facilities
9 located within the diked area. However, the gravel surrounding the
10 sump is stained. The stain was caused by a backflow of liquids from
11 the sump at the vanillin plant.

12 Two other spills occurred at the vanillin plant. The first
13 occurred on September 30, 1980, when a drain valve located between the
14 pulp mill and diked area was left open. About 500 gallons of RAL
15 spilled on the ground. The RAL was washed into the Hoquim storm sewer
16 system and eventually discharged into Grays Harbor.

17 The second spill occurred on October 27, 1980, when a pipe flange
18 broke spilling about 1300 gallons of RAL on the ground outside the
19 tank farm. The liquid eventually flowed into the Hoquim River.

20 V

21 On July 24, 1980, respondent's employee saw a black liquid
22 draining from ITT's property into a catch basin connected to the
23 Hoquiam storm drain. The specific source of the liquid is not known.
24 Respondent suspected that the source was the sump within the diked
25 area. It is not certain that paving the diked area would stop the
3 drainage observed.

VI

The groundwater table under the diked area is near the pervious land surface. Respondent is concerned that, without an impervious surface, a spill within the diked area could eventually reach and contaminate the public surface and ground waters. A regulatory order requiring the installation of such a surface was issued by respondent and appealed by ITT.

VII

An impervious surface would cost more than \$10,000 for the reinforced concrete. ITT estimates its costs for the complete installation of such surface at \$30,000.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

This Board has jurisdiction over the persons and subject matter of this proceeding.

II

RCW 90.48.120(2) authorizes respondent to issue an appropriate order or directive whenever it believes that any person "shall violate ^{about} or is/to violate the provisions" of chapter 90.48 RCW. A violation need not have occurred; a violation need only be imminent or about to occur. Respondent establishes such by a preponderance of the evidence.

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

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III

Respondent is guided by the policy of the Act which seeks to insure the purity of all waters of the state consistent with:

public health and public enjoyment thereof, the propagation and protection of the wildlife, birds, game fish and other aquatic life, and the industrial development of the state, . . .

RCW 90.48.010. To do this, respondent may require the use of all known available and reasonable methods by industries to prevent and control pollution. RCW 90.48.010.

IV

"Waters of the state" include underground and surface waters. RCW 90.48.010.

V

There is some possibility that the liquids contained within ITT's diked area could spill onto the ground and pollute the groundwater. However, the occurrence was not shown to be imminent or reasonably likely to happen within the entire diked area. Accordingly, the order requiring installation of an impervious surface should be stricken. ITT should not have to construct facilities to guard against any and every eventuality, however remote. A standard of reasonableness must prevail with respect to an order requiring certain facilities to be installed. In this instance, ITT relies on its system which it believes to be near failsafe. It is willing to accept the penalties of which it was forewarned, and for which it is strictly liable, and other consequences, such as excavating polluted soil, in the event that its belief is ultimately proved wrong, and more expensive.

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

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VI

The evidence shows that the sump within the dike can introduce liquids into the diked area, overflow onto the gravel, and then go into the ground water. Respondent's order should be remanded for consideration of reasonable and available methods to prevent this occurrence, and sufficiency of ITT's sump alarm system, and reissued consistent with its determination. The evidence also shows that the black liquid observed on July 24, 1980, may be a continuing event. If so, it may be appropriate to require ITT to stop the flow of the black liquid into public waters.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.


From these Conclusions, the Board enters this

ORDER

The provision of paragraph 1 of Order Docket No. DE 80-641 requiring the installation of an impervious surface on the floor of the diked tank area is stricken. The matter is remanded to the Department of Ecology for further proceedings consistent with this decision.

DATED this 7th day of May, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman

did not participate
GAYLE ROTHROCK, Member


DAVID AKANA, Member

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER